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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: [redacted] Office: Texas Service Center Date: SEP 25 2000

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(C)

IN BEHALF OF PETITIONER:

[redacted]

Public Copy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Texas Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a Georgia corporation that claims to be engaged in the export and distribution of art, supplies and tobacco products. The petitioner further claims to be a subsidiary of [redacted] located in [redacted] The petitioner seeks to classify the beneficiary as a multinational executive or manager pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(C), to serve as the vice president of operations. The director determined that the petitioner had not established that a qualifying relationship exists between the petitioner and the claimed parent company, or that the beneficiary had been employed in a managerial or executive capacity by the entity abroad for at least one of the previous three years, or that the petitioner has the ability to pay the proffered wage.

On appeal, counsel argues that the beneficiary is eligible for the benefit sought.

Section 203(b) of the Act states, in pertinent part:

> (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> * * *
>
> (C) Certain Multinational Executives and Managers. -- An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

The first issue to be examined is whether a qualifying relationship exists between the petitioner and the claimed parent company.

8 C.F.R. 204.5(j)(2) states in pertinent part:

> *Affiliate* means:
>
> (A) One of two subsidiaries both of which are owned and controlled by the same parent or individual;

(B) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity;

Subsidiary means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

The visa classification that the petitioner seeks is intended for multinational executives and managers. The language of the statute specifically limits this visa classification to those executives and managers who have previously worked abroad for at least one year in the preceding three for the overseas entity, and are coming to the United States to work for the same entity, or its affiliate or subsidiary. In order to qualify for this visa classification, the petitioner must establish that there is a qualifying relationship between the United States and foreign entities, in that the petitioning company is the same employer or an affiliate or subsidiary of the overseas company.

In a letter dated December 5, 1997, the petitioner stated that it "is a wholly-owned subsidiary of [redacted] the [redacted] company." The petitioner submitted a photocopy of its articles of incorporation which indicated that it "shall have the authority to issue not more than ten thousand (10,000) shares of no par common stock." The petitioner also submitted a photocopy of a certificate that indicated [redacted] owned 500 shares of [redacted]

On August 10, 1998, the director requested that the petitioner submit additional evidence. In response, the petitioner submitted a different certificate attesting to [redacted] ownership of 500 shares of [redacted] The petitioner also submitted a letter from [redacted] which indicated that the petitioner's "total authorized shares total 10,000, of which 500 have been issued to [redacted] . . . [they] have been the only shareholder of the Company since its incorporation."

On appeal, counsel states that [redacted] . . . is a 100% wholly owned subsidiary company of [redacted] trading [redacted] Counsel submits a photocopy of the petitioner's 1997 Form 1120, U.S. Corporation Income Tax Return. According to Schedule K of this return, [redacted] 100% of the shares of the company. The evidence submitted does not establish that a qualifying relationship exists between [redacted]

[redacted] The petitioner has not submitted any independent, corroborative evidence (such as monetary wire transfers) to document the sale of 500 shares of stock to [redacted] Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). Accordingly, the petition may not be approved.

The next issue to be examined is whether the beneficiary was employed by the foreign entity for at least one of the previous three years.

8 C.F.R. 204.5(j)(3)(i)(B) states:

> If the alien is already in the United States working for the same employer or a subsidiary or affiliate of the firm or corporation, or other legal entity by which the alien was employed overseas, in the three years preceding entry as a nonimmigrant, the alien was employed by the entity abroad for at least one year in a managerial or executive capacity.

The petition was filed on December 16, 1997. Therefore, the petitioner must establish that the beneficiary was employed abroad for at least one of the three years from December 16, 1994 to December 16, 1997. As was previously discussed, a relationship between [redacted] and [redacted] has not been established. As such, any work performed by the beneficiary for [redacted] would not be considered qualifying.

The next issue to be examined is whether the petitioner has the ability to pay the proffered wage.

8 C.F.R. 204.5(g)(2) states, in pertinent part:

> *Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage . . . Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner indicated that it will pay the beneficiary an annual salary of $50,000.00. The petitioner submitted a self-prepared "Balance Sheet As of July 31, 1997." On August 10, 1998, the director requested that the petitioner submit additional evidence. In response, the petitioner submitted a self-prepared "Balance Sheet As of July 31, 1998." On appeal, the petitioner submits its 1997 federal income tax return. According to this return, the petitioner earned $14,910 that year in gross receipts or sales and

ended with a deficit of $428 in taxable income. Further, Schedule L of this return indicates that the petitioner ended the year with $2,158 in cash. The evidence submitted in support of this petition is not sufficient. The balance sheets are not among the list of documents that may be submitted to support a petitioner's claim to be able to pay a wage as listed at 8 C.F.R. 204.5(g)(2). As such, these balance sheets carry no evidentiary weight. Also, the petitioner's 1997 tax return does not support its claim to be able to pay the beneficiary an annual salary of $50,000.00. Accordingly, the petitioner has not established its ability to pay the proffered wage in accordance with 8 C.F.R. 204.5(g)(2).

The burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.